

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:LAD:LA:TL-N-5012-99KHAnkeny

date: November 22, 1999

to: James Mack, Los Angeles District, Los Angeles

from: District Counsel, Los Angeles District, Los Angeles

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subject: Supplementary Advice Concerning Consents to Extend the Period of  
Limitations for the [REDACTED]

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and is prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

ISSUE

Who is authorized to sign the consents to extend the period of limitations (the Consents) for each [REDACTED]'s employment tax liability and for its Chapter 3 tax liability?

CONCLUSION

The Consents for a [REDACTED]'s employment tax liability and for its Chapter 3 tax liability should be signed by either: a duly authorized officer of that [REDACTED]; or an attorney, certified public accountant, enrolled agent, or enrolled actuary specifically authorized by power of attorney to sign on behalf of the [REDACTED].

FACTS

You asked about the Consents for [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. You were concerned about the Consents for the [REDACTED] liability for the withholding of tax on nonresident aliens and foreign corporations under Chapter 3 of the Internal Revenue Code and for employment tax for [REDACTED] through [REDACTED]. During those years, the [REDACTED] were subsidiaries of [REDACTED]. On [REDACTED] [REDACTED] were spun off the [REDACTED]. The [REDACTED] are currently subsidiaries of [REDACTED].

In our October 8, 1999 advice, we explained that [REDACTED] could sign one Consent on behalf of all of the [REDACTED] so long as each of the [REDACTED] authorized the signatory to sign on its behalf. Rev. Proc. 72-38, 1972-2 C.B. 813, clarified, Rev. Proc. 82-6, 1982-1 C.B. 409.

On receiving our October 8, 1999 advice, you explained that each [REDACTED] had already signed separate Consents earlier this year. We asked you to provide copies of those Consents.

You attached copies of those Consents to your November 12, 1999 memorandum. With respect to the Consents for the [REDACTED] employment tax liability for [REDACTED], [REDACTED], and [REDACTED], you attached a copy of the Riders for the Form SS-10, but not the Form SS-10. The Riders identified "[REDACTED]" as the name of the parent corporation. They stated [REDACTED]'s address and identification number and specified the particular taxable year for the employment tax. Each of the [REDACTED] Riders specified the [REDACTED]'s name, address, identification number, and taxable year. The Riders contained a statement that "It is further agreed that this consent will have the same force and effect as Separate consents were executed by each subsidiary named herein and the District Director of the Internal Revenue (or Assistant Regional Commissioner--Appellate)." The Riders were signed on [REDACTED] by a person who identified his title as Secretary. According to your November 12, 1999 memorandum, that person is [REDACTED].

With respect to the Consents for the Chapter 3 tax liability, we received copies of the Forms 872 for [REDACTED] and [REDACTED], but not for [REDACTED]. Each of the [REDACTED] Forms 872 identified the name of the [REDACTED], its address, the particular taxable year, and the tax as "income tax to be paid at Source (Under Chapter 3 of the Internal Revenue Code) due on Form 1042." They were signed on [REDACTED] by [REDACTED], identifying his title as

Secretary. On some of the Forms 872, the [REDACTED]'s name was typed in as the name of the corporation on behalf of which [REDACTED] signed. On the other Forms 872, the name of the corporation was left blank.

In your November 12, 1999 memorandum, you also asked whether the Consents for employment tax liability were required to be signed by [REDACTED] or by [REDACTED].

#### DISCUSSION

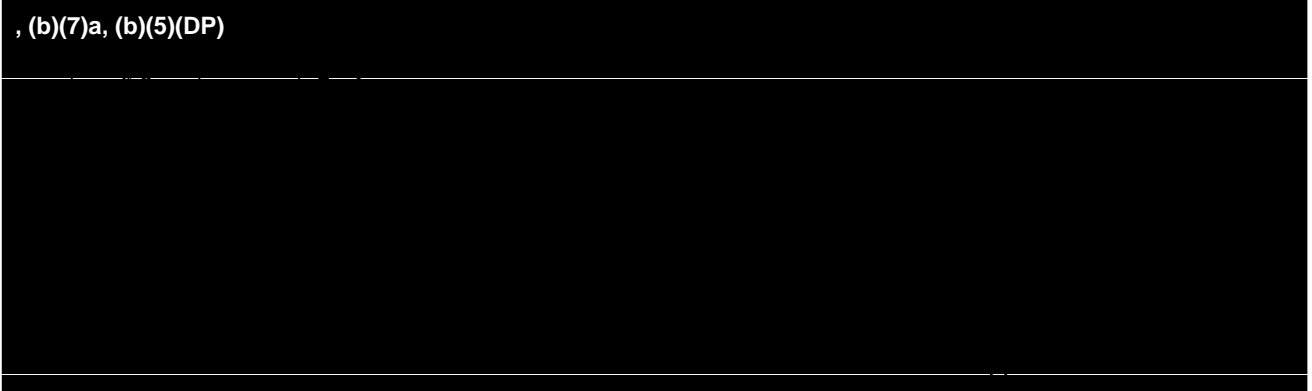
Each [REDACTED]'s Consents should be signed by a person who is authorized to sign on behalf of that [REDACTED]. There are two alternative bases for this authority. First, the [REDACTED]'s president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer would be authorized to sign on behalf of the [REDACTED]. The Regulations do not specify who may sign a Consent. However, documents generally should be signed according to the forms or Regulations prescribed by the Secretary. I.R.C. § 6061(a). Therefore, the Service applies the rules for returns, which may be signed by the corporation's president, vice-president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer. I.R.C. § 6062; Rev. Rul. 83-41, 1983-1 C.B. 349, *clarified and amplified*, Rev. Rul. 84-165, 1984-2 C.B. 305.

In the alternative, a person specifically authorized by power of attorney to sign on behalf of that [REDACTED] would be authorized to sign. Amesbury Apartments, Ltd. v. Commissioner, 95 T.C. 227, 242 (1990) (an accountant was authorized to sign the Form 872-P under the power of attorney signed by the partnership's general partner). A person appointed as an attorney-in-fact under a power of attorney must also be an attorney, certified public accountant, enrolled agent, enrolled actuary, or other person who is granted temporary recognition as an enrolled agent. Treas. Reg. § 601.502(b).

Therefore, we recommend that you confirm the authority of [REDACTED], who signed both the Forms 872 and the Riders for the Forms SS-10. Was [REDACTED] a duly authorized officer of each [REDACTED]? Or, in the alternative, was he an attorney, certified public accountant, enrolled agent, or enrolled actuary specifically authorized by power of attorney to sign on behalf of each [REDACTED]? (To the extent [REDACTED] also signed the Riders on behalf of the parent corporation, [REDACTED], [REDACTED] should also be a duly authorized officer of [REDACTED]. Rev. Rul. 83-41, 1983-1 C.B. at 350.)



, (b)(7)a, (b)(5)(DP)



Please also note that because we did not receive a copy of the Forms SS-10 to which the Riders were attached, we provide no opinion about those Forms SS-10.

In accordance with CCDM(35)3(19)4, we are furnishing a copy of this advisory opinion applying well-settled principles of law to the Assistant Chief Counsel (Field Service) for 10-day post-issuance review. Please call me at 213-894-3027, ext. 155, if you have any questions.

JAMES A. NELSON  
District Counsel

By: \_\_\_\_\_  
KATHERINE H. ANKENY  
Attorney